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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CATHERINE JAPHET,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. A06-291 CV (RRB

COMPLAINT

Plaintiff Catherine Japhet, by and through her counsel of record, Cooke, Roosa & Valcarce, LLC, and hereby claims and alleges as follows:

1. Plaintiff Catherine Japhet is a resident of the State of Alaska.
2. The acts or omissions upon which this cause is based occurred in Bethel, Alaska.
3. This suit is brought pursuant to the Federal Tort Claims Act, 28 U.S.C.

§ 2674, and this court has exclusive jurisdiction over this action pursuant to 28 U.S.C. § 1346(b).

4. Notice of this claim as required by 28 U.S.C. §2675 was received by the U.S. Department of Health and Human Services on March 22, 2006.

5. Defendant has rendered a final decision, denying the claim on August 29, 2006.

6. The Yukon Kuskokwim Delta Regional Hospital (hereafter "YKDRH") is operated by the Yukon Kuskokwim Health Corporation (hereafter "YKHC") in Bethel, Alaska. YKHC is a compacting entity of the Indian Health Service (IHS). Health care providers at YKDRH are employees of the United States for purposes of liability under the FTCA if they are employees of YKHC, acting within the scope of their employment and are carrying out the compact with the IHS at the time of the act which gives rise to the complaint.

7. At all times pertinent to this complaint, the employees of YKHC who are alleged to have acted in a negligent manner were acting within the scope of their employment and were also carrying out YKHC's compact with the IHS.

8. Catherine Japhet is an adult, and was born on July 31, 1985. She is 21 years of age.

9. On or about February 25, 2004, Catherine Japhet received mental health care at the YKDRH from Suzanna Dee at the PCC Behavioral Health. Her chief complaint was

“feel empty, not the same.” She was prescribed Ambien and Zoloft. On that day her weight was recorded as 145 pounds, height 64 inches.

10. On April 1, 2004, she was prescribed Zyprexa, a medication used for the treatment of schizophrenia¹. Zyprexa is a strong anti-psychotic medication. Catherine Japhet was not psychotic. Medical records at YKDRH do not indicate who prescribed this medication for her. Plaintiff Catherine Japhet clearly remembers being prescribed Zyprexa by Susanna Dee at her April 1, 2004, appointment. The records of that appointment were either lost or never maintained by YKDRH.

11. On April 6, 2004, Catherine Japhet was seen at the YKDRH Emergency Department (ED) for complaints of “feeling weak” after a significant nose bleed in the early morning. Plaintiff had been seen in the YKDRH ED the night before for complaints of being “weak and dizzy” but was sent home after being administered IV fluids. The medical chart for that date documents she was taking Zyprexa with a history of depression & anxiety. Lab tests showed elevated serum glucose; however, no intervention was noted. She was also tachycardic² which was attributed to possible viral infection. On that date her serum glucose was 387, and her weight was 147.7 pounds.

12. On April 12, 2004 Catherine Japhet was again seen at the YKDRH ED for complaints of feeling weak. After another significant “nose bleed” in the morning. She

¹ See http://www.rxlist.com/cgi/generic/olanzapine_ids.htm

² Tachycardia is an abnormally rapid beating of the heart, defined as a resting heart rate of 100 or more beats per minute in an average adult.

was again tachycardic, flushed and febrile (temperature 102 F.). Lab tests showed fasting serum glucose of 590. Client diagnosed with diabetes (crisis) and emergent care was initiated with an insulin drip and client admitted for monitoring and follow-up care. She was still taking the Zyprexa prescribed for her by Susanna Dee, as no one had instructed her to stop taking the medication. Subsequent records indicate that Catherine Japhet is now insulin dependent with hospital admissions for uncontrolled diabetes.

13. On March 1, 2004, a month before Catherine Japhet was prescribed the Zyprexa, Eli Lilly and Company, the manufacturer of Zyprexa, issued a Safety Alert (See Exhibit A), in response to an order from the United States Food and Drug Administration. The Safety Alert warned that Zyprexa posed an increased risk of hyperglycemia (high blood sugar) and diabetes. It also warned that:

Patients with risk factors for diabetes mellitus (e.g., obesity, family history of diabetes) who are starting treatment with atypical antipsychotics should undergo fasting blood glucose testing at the beginning of treatment and periodically during treatment. Any patient treated with atypical antipsychotics should be monitored for symptoms of hyperglycemia including polydipsia, polyuria, polyphagia, and weakness. Patients who develop symptoms of hyperglycemia during treatment with atypical antipsychotics should undergo fasting blood glucose testing.

14. On April 1, 2004, no family history was taken of Catherine Japhet, she was not monitored for hyperglycemia, and the requirements of the Safety Alert were not followed.

COUNT I

15. Plaintiff incorporates by reference the preceding paragraphs of this

Complaint, and further alleges that health care providers employed at the YKDRH, including mental health care providers, pharmacists, members of the hospital's formulary and pharmacy committees, and other medical staff members were negligent in providing medical care to Catherine Japhet. These negligent acts include failing to provide adequate treatment and care, including but not limited to negligent prescription of Zyprexa, failure to properly monitor Catherine Japhet's blood chemistry for hyperglycemia, including polydipsia, polyuria, polyphagia, and weakness, and failure to obtain her informed consent prior to prescribing a dangerous drug.

16. Health care providers at the YKDRH either lacked the degree of knowledge or skill ordinarily exercised under the circumstances, at the times of the acts complained of, by health care providers in the field or specialty in which they were practicing, or they failed to exercise the required degree of care, knowledge, or skill, and as a proximate result of this lack of knowledge or skill or the failure to exercise the required degree of care, the plaintiff now suffers from injuries that she would not otherwise have incurred.

17. As a direct and proximate result of the negligence of the defendant described above, the Plaintiff, Catherine Japhet, has suffered past and future economic and non-economic damages, including but not limited to personal injury; great physical and mental pain, shock, agony and emotional suffering; mental anguish and emotional distress; medical costs and related transportation, lodging and other expenses; loss of wages, loss of economic opportunities; loss of subsistence opportunities; all to her damage in excess of

\$100,000.00, the exact amount to be determined at trial.

DAMAGES

WHEREFORE, the plaintiff prays for relief as follows:

A. An amount in excess of One-hundred Thousand Dollars (\$100,000.00), the exact amount to determined at trial;

B. For costs and such other and further relief as this court deems just and equitable.

DATED at Anchorage, Alaska this 20th day of December 2006.

COOKE, ROOSA & VALCARCE, LLC
Attorneys for Plaintiffs

By: 

Kenneth S. Roosa

Initial Service upon:

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